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No. 99-830

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1999

DONALD STENBERG, ATTORNEY GENERAL FOR THE STATE OF NEBRASKA, ET AL, PETITIONERS

v.

LEROY CARHART, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE WITH BRIEF BY LEGAL DEFENSE FOR UNBORN CHILDREN IN SUPPORT OF THE PETITIONERS

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MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Interest of *Amicus Curiae*

The *amicus curiae* supports the upholding of the Nebraska abortion statute.

The *amicus curiae* brief defends the constitutional right to life of the unborn which the parties have not done.

Argument

The *amicus curiae* proves that the U.S. Constitution's universal guarantee of life to "any person," made in its Fifth and Fourteenth Amendments, does include the unborn. Thus the Court must not only overrule *Roe v. Wade*, 410 US. 113 (1973), it must rule that State and federal governments have a duty to protect unborn life.

This disposes of all issues in this case.

Consent to File

Neither petitioners nor respondent gave written consent to file this *amicus curiae* brief.

Conclusion

The U.S. Constitution's universal guarantee of life to "any person" is America's most important legal right. The lives of tens of millions of children depend on their being permitted to present all relevant evidence and arguments to prove that the U.S. Constitution's universal guarantee of life to "any person" does include the unborn.

Alan Ernest
Counsel

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INTEREST OF *AMICUS CURIAE*

The *amicus* defends the right to life of the unborn.

SUMMARY OF ARGUMENT

The Constitution's guarantee of life to "any person," made in its Fourteenth Amendment, does include the unborn.[1]

ARGUMENT

I.

THE U.S. CONSTITUTION'S GUARANTEE OF LIFE TO "ANY PERSON" DOES INCLUDE THE UNBORN.

The Declaration of Independence announced that reverence for life is America's founding principle. It said that all men are created equal, all are endowed by their Creator with an unalienable right to life, and the purpose of government is to protect the life of everyone.

America's faith is that if we will follow our reverence for life wherever it may lead, then a future of more abundant life, which we can all look forward to with hope, will unfold before us.

On the other hand, in *The Federalist* No. 10, James Madison warned that the primitive idea that some can gain by harming others had ruined all democracies known to history. And today, the lethal inventions of science have made reverence for life the only way to the future.

A. On Its Face, The Constitution's Guarantee Of Life To "Any Person" Does Include The Unborn.

This guarantee of life to everyone was incorporated into the U.S. Constitution. The 14th Amendment's guarantee of life reads: "(N)or shall any State deprive ***any person*** of life...

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[1] *See also* Alan Ernest, *Mass Murder Is Liberty: How The United States Is Ruled By The Decree MASS MURDER IS LIBERTY* 20-73 (1998).

Rule 37.6 disclosure: Counsel authored the whole *amicus curiae* brief; no monetary contributors are required to be identified.

without due process of law." (emphasis added)

The words "any person" are universal, admit of no exceptions for anyone, make no distinction between born and unborn life, and on their face include the unborn, the same as everyone else. The obvious purpose of guaranteeing life universally to "any person" was to prohibit officials making exceptions so some persons could be exterminated.

The Court admitted that if the word "person" included the unborn, then *Roe v. Wade* "collapses," because the lives of the unborn would be "guaranteed" by the Constitution.[2] But the Court implied that "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn."[3] Thus the Court hit the Constitution head-on, directly defied its express prohibition of extermination, and condemned to death those victims whom the Constitution, by its plain words, endeavors to preserve.

The words "any person" are the two most important words ever written into law because they protect the lives of everybody from extermination, and they summarize America's unique contribution to civilization. As Abraham Lincoln said, what made America great was the promise "that *all* should have an equal chance."[4]

The words "any person" are the words which guarantee that equal chance to live to *all*. They stand as the supreme political achievement of the human race, the prize of millenniums of struggle. If the Constitution had stated it protected the life of "any person - except the unborn," then its words would support *Roe v. Wade*. But its words say "any person," without any exceptions.

The Court ruled that the words "any person" included Chinese aliens, merely saying the words are "universal in their application, to all persons…without regard to any differences." *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).

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[2] *Roe v. Wade*, 410 U.S. 113, 156-157 (1973).

[3] *Id.*, at 158.

[4] Abraham Lincoln, 4 *The Collected Works of Abraham Lincoln* 240 (R. Basler ed. 1953). (emphasis in text)

In 1975, the Federal Constitutional Court of West Germany held that the words in its Constitution, "Everybody has the right to life," did include the unborn. The court explained that the word "everybody" is universal.[5]

But in *Roe v. Wade*, the Court ignored the letter of the law. Instead the Court focused on the isolated word "person," and ignored its modifier "any." Yet "any" is the word which means "all," and extends the right to life to everyone without any exceptions.

By reading the universal guarantee of life to "any person" as if it were merely a guarantee to "some persons," the Court did the most forbidden thing and reduced the most important law in history to nothing.

The Constitution extends its guarantee of life to "any person." The letter of the law permits no exceptions. On their face the universal words "any person" do include the unborn.

B. The Spirit Of The Law Proves That The Constitution's Guarantee Of Life To "Any Person" Does Include The Unborn.

Roe v. Wade violates the spirit of the law, as well as its letter. The Court itself ruled that the Declaration of Independence is the spirit of the Fourteenth Amendment.[6]

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[5] "No distinction can be made among the several stages of developing life before birth, or between prenatal or postnatal life." The court's opinion is reported in R. Destro, *Abortion and the Constitution: The Need For A Life Protective Amendment*, 63 Cal. L. Rev. at 1341-51 (1975).

[6] *Gulf, Colo. & S. Ry v. Ellis*, 165 U.S. at 159-160 (1896):

> "The first official action of this nation declared the foundation of government in these words: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life…." While such declaration of principles may not have the force of organic law…yet the latter is but the body and the letter of which the former is the thought and the spirit, and it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence. No duty

There is no real medical dispute that the unborn have been created and are alive.[7] Reading the letter of the Constitution, its guarantee of life to "any person," in the spirit that ***all*** are "created equal," and ***all*** shall get their chance to live, proves that the words "any person" do include the unborn.

C. History Confirms That The Constitution's Guarantee Of Life To "Any Person" Does Include The Unborn.

In addition to the letter and spirit of the law, the universal embrace of this guarantee of life to "any person" is also evident from its history.

The last time the Court implied an exception to the words "any person" was *Dred Scott v. Sandford,* 19 How. 393 (1857). There the Court ruled that the phrase in the Declaration of Independence, "all men are created equal," did not include black persons; the words "any person," as used in the Fifth Amendment, did not include black persons; there was a constitutional right to own a slave ("the right of property in a slave is distinctly and expressly affirmed in the Constitution"); Congress could not prohibit slavery in the territories; people were free to choose whether or not to own slaves; and black persons could not sue in federal courts to see if they were slave or free.

Abraham Lincoln opposed *Dred Scott*. If officials can say all men are created equal except black men, he asked "where will it stop?" If officials can say the Declaration does not include black persons, Lincoln argued that they can say it does not include any other person. He claimed that *Dred Scott* was based on "falsehood."[8] He alleged a conspiracy by the U.S. Supreme Court, two U.S. Presidents, and leading members of

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rests more imperatively upon the courts than...to secure the equality of rights which is the foundation of free government."

[7] The uncontested medical evidence in the Texas brief in *Roe v. Wade* showed the fetal heart begins "pulsations at 24 days," and "brain waves have been noted at 43 days," and the unborn child is "alive."

[8] A. Lincoln, *2 The Collected Works of Abraham Lincoln* 495 (1953).

Congress to overturn the U.S. Constitution and to impose a slave empire on America.[9]

Lincoln said he would not obey *Dred Scott*. Citing both Thomas Jefferson and Andrew Jackson as authority,[10] he said the president swears an oath to obey the Constitution as he understands it, and not as it was understood by the Supreme Court. If the president were bound by *Dred Scott*, Lincoln explained in his Inaugural Address, "the people will have ceased, to be their own rulers...."[11]

Dred Scott triggered a civil war. Various States withdrew from the Union rather than be deprived of their constitutional right to own a slave, as decreed by the Court. President Lincoln defied the Court's *Dred Scott* decision that there was a constitutional right to own a slave because he emancipated the slaves and declared them to be "forever free."[12] He reminded us at Gettysburg that we were fighting to see whether a nation dedicated to the proposition that "all men are created equal" could long endure.

The framers intended the 14th Amendment to rededicate America to its original proposition. One of its framers said:

> It establishes equality before the law, and it gives to the humblest...the most despised...the same protection before the law as it gives to the most powerful....Without

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[9] *Id.*, at 461-469, 521.

[10] *Id.*, at 402, 516-17.

[11] A. Lincoln, 4 *The Collected Works of Abraham Lincoln* 268 (1953).

[12] A. Lincoln, 6 *The Collected Works of Abraham Lincoln* 28-30 (1953). All constitutional rights suspended during wartime are automatically reinstated after the war is over. If Lincoln had believed that the president was bound by the Court's decision in *Dred Scott*, that there was a constitutional right to own a slave, he could only have freed slaves for the war's duration - not forever. But Lincoln rejected the Court's claim that there was a constitutional right to own a slave, and he proclaimed the slaves to be "forever free."

this…there is no republican government.[13]

The framers of the Fourteenth Amendment learned from *Dred Scott*. They said the Supreme Court must never again imply exceptions to the words "any person." They employed the universal words most suited for this purpose.

And by the middle of the 19th century, medical science had proved that an unborn child was alive throughout gestation, and there was no time during gestation when science could draw a line and say the unborn were not alive. By the time the Fourteenth Amendment was adopted in 1868, the vast majority of States had already enacted criminal abortion laws to protect all stages of unborn life, and within a few years such laws were universal.

The history of these criminal abortion laws shows that the framers and adopters of the Fourteenth Amendment intended its universal guarantee of life to "any person" to mean what it says, and to include the unborn the same as everyone else.

By merely changing the names of the victims, the Court repeats the *Dred Scott* disaster. The Court repudiates a major point of the Civil War and the Fourteenth Amendment: that judges would never again be at liberty, as in *Dred Scott*, to convulse society by implying more exceptions to the words "any person." The Court claims that without one word of explanation the framers intended their guarantee of life to "any person" to sweep away all their abortion statutes and make the killings, which they said were criminal, into "liberty." And the Court amends the Declaration of Independence to read "all men are created equal, except those created to be killed." And the Court claims it can decree who was created to be killed.

The Court did the most forbidden thing: it defied the U.S. Constitution's guarantee of life to "any person" and decreed extermination in violation of criminal statutes to be legal.

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[13] Rep. Jacob Howard, quoted in B. Schwartz, 1 *Statutory History of the United States: Civil Rights* 262 (1970).

The Fourteenth Amendment's letter, spirit and history prove that its universal guarantee of life to "any person" does include the unborn.

II.

ROE v. WADE IS VOID BECAUSE IT CRIMINALLY DEFIED THE CONSTITUTION'S GUARANTEE OF LIFE TO "ANY PERSON" AND CONDEMNED TO DEATH MILLIONS OF VICTIMS WHOM THE CONSTITUTION ENDEAVORS TO PRESERVE.

A.

Roe v. Wade Criminally Defied The Constitution's Guarantee Of Life To "Any Person" Because The Court Decreed Killings To Be "Liberty" Which The People Had Defined To Be "Murder." In Effect, The Court Decreed "Mass Murder Is Liberty."

When *Roe v. Wade* was decided in 1973, an abortion was murder if the child was "born alive." A child could be born alive during second or third trimester abortions. Indeed, the State of Georgia forewarned the Court that certain abortions were "murder."[14] But the Court scorned that warning and decreed those very killings to be "liberty."[15]

In 1976, a physician explained to Congress that *Roe v. Wade* permitted second trimester hysterotomy abortions and children killed by this abortion can be "born alive":

> With few exceptions, babies aborted by this will all move, will all breathe, and some will cry…. Almost all were **born alive**.[16] (emphasis added)

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[14] *Doe v. Bolton*, 410 U.S. 179 (1973), Brief for Appellees 52-53.

[15] *Roe v. Wade*, 410 U.S. 113, 153 (1973). The Court claimed that a right to abortion was included in the "concept of personal liberty."

[16] Testimony of Dr. J.C. Willke, M.D., and Barbara Willke, 1 *Hearings on Constitutional Amendments on Abortion*, Before subcomm. On Civil and Constitutional Rights, of the House Comm. Of the Judiciary, 94th Cong., 2d Sess., at 397 (1976).

The physician showed Congress this photograph of a child killed by a salt poisoning abortion:

If the Court canot lawfully decree murder to be liberty, about 3 million abortions can be investigated as murders

The physician testified that this method could also result in a child being "born still alive."

For almost four centuries Americans had defined such killings to be "murder." But in 1973 the Court decreed such killings to be "liberty."

The Court also decreed a constitutional right to third trimester abortions to preserve the mother's "health," in effect, abortion on demand right up to birth.[17] Of course, for

[17] *Doe v. Bolton*, 410 U.S. 179 (1973). With no precedent in law or medicine, the Court decreed that abortions could be performed in the 3rd trimester to protect the woman's "health," which the Court ruled included "all factors - physical, emotional, psychological, familial, and the woman's age - relevant to the well being of the patient." Few abortions could be prosecuted as criminal under this revolutionary test.

almost four centuries those killings (not necessary to save the mother's life) were murder if the child were "born alive."

And by 1973, States had commonly decided that in the third trimester a child need not be "born alive" but was a human being within their homicide or murder statutes if the child were killed "in the process of being born."[18] The Court also decreed those murders to be liberty. Indeed under *Roe v. Wade*, doctors kill children in the very process of being born.

But if the Court cannot lawfully decree these murders to be liberty, then we have the new reckoning. And, as the new millennium begins, about three million abortions can be investigated as murders.[19]

1. The Court Decreed Killings To Be "Liberty" Which Americans Had Defined To Be "Murder" Since Earliest Colonial Times.

America's first settlement at Jamestown followed the English common law, as did other colonies. The common law defined an abortion, in which a "quick" (about 4 months gestation) child died after being "born alive," to be "murder."[20] Even if not yet viable, if the child was "born alive," Coke (the standard 17th century legal authority) condemned the abortion as "so horrible an offense" and "this is murder."[21]

Today Coke's work is an indispensable dictionary for de-

[18] *People v. Chavez*, 77 Cal. App. 2d 621, 626 (1947). Such abortions are now commonly called "partial-birth abortions" where doctors kill children who are in the process of being born.

[19] About 10% of all abortions each year are 2nd or 3rd trimester abortions. The Washington Post, April 26, 1985, A11. Most 2nd and 3rd trimester abortion procedures can result in a child "born alive."

[20] Coke, 3 *Institutes* 50; Hawkins, 1 *Hawkins* Ch. 13, s. 16; Blackstone, 4 *Bl. Com.* 198.

[21] Coke, 3 *Institutes* 50.

fining the foundation of American liberty, such as distinguishing between liberty and murder.[22] (Today all Americans must rely on these same bedrock legal authorities, as set out for the unborn, to prevent their own extermination from being called liberty. If these authorities cannot protect the unborn, then they cannot protect any other group of persons.)

The English writers cited this as the correct statement of the law.[23] And English courts fo[illegible]ved this law.[24]

The common law was the la[illegible] of the land in colonial America. By allowing second and third trimester abortions, the Court decreed killings to be "liberty" which Americans had defined to be "murder" since earliest colonial times.

2. The Court Decreed Killings To Be "Liberty" Which The Framers And Adopters Of The Fourteenth Amendment Defined To Be "Murder."

The common law is the dictionary which American courts use to construe the State and federal homicide statutes.[25]

By the time the Fourteenth Amendment was adopted in 1868, American legal authorities and State supreme courts had long followed the common law rule that second and third trimester abortions were murder if the child were born alive. And viability was irrelevant. If death were caused by the child being too immature to survive outside the womb, the abortion

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[22] Jefferson wrote that Coke's *Institutes* were "the fundamental code of English law." "This work is executed with so much learning and judgment, that I do not recollect that a single position in it has ever been judicially denied.... It may still be considered as the fundamental code of English law." T. Jefferson, 14 *The Writings of Thomas Jefferson* 57 (1907). Jefferson served on the 1776 committee which adapted Virginia's laws to republican form, the common law being assigned to him.

[23] J. F. Archbold, 1 *Complete Treatise on Criminal Procedure, Pleading and Evidence* 783 (Waterman Am. ed. 7th ed. 1860); W.O. Russell, 1 *A Treatise on Crimes and Misdemeanors* 671-672 (4th ed. 1865).

[24] *Regina v. West,* 2 C & K 784 (1848).

[25] *Clarke v. State*, 117 Ala. 1 (1898); *Hamilton v. United States*, 26 App. D.C. 382 (1905).

was murder.

In 1859 the American Medical Association reported the law of murder which existed throughout the United States:

> If a person, intending to procure abortion, does an act which causes the child to be born earlier than its natural time, and therefore in a state much less capable of living, and it afterwards die in consequence of such premature exposure, the person who by this misconduct brings the child into the world, and puts it into a situation in which it cannot live, is guilty of ***murder***.[26] (emphasis added)

This was the uncontradicted view in the United States when the Fourteenth Amendment was adopted.[27] This definition of murder was approved by the preeminent legal writers of the 19th century,[28] and it was adopted by State supreme courts.[29] It was still the law in 1973.[30] In 1975 the New Jersey courts applied this law to an unviable fetus born alive:

> That a fetus may be the victim of murder if it be born alive has long been a part of our common law....Coke, *Institutes* 58 (1648).[31]

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[26] Reported in A. S. Taylor, *A Manual of Medical Jurisprudence* 462 (6th ed. 1866). He described the AMA's report as "a complete and comprehensive exhibit of laws of each of the United States." *Id.*, at 460.

[27] J. P. Bishop, 2 *Commentaries on the Criminal Law* 365 (4th ed. 1868); A. S. Taylor, *supra* note 26, at 462, 517 (1866).

[28] F. Wharton, *A Treatise on the Law of Homicide in the United States* 93 (1855); Bishop, *supra* note 27; Taylor, *supra* note 26.

[29] *Clarke v. State*, 117 Ala. 1 (1898); *Watson v. State*, 117 A 2d 549 (1955); *Porter v. Lassiter*, 87 S. E. 2d 100 (1955); *Bennett v. State*, 377 P 2d 634 (1963); *State v. Anderson*, 343 A 2d 505 (1975); *People v. Chavez* 176 P. 2d 92 (1947); *Singleton v. State*, 35 So 2d 375 (1948).

[30] 2 L. Burdick, *The Law of Crime* 156 (1946); 1 *Wharton's Criminal Law and Procedure* 434 (12th ed. 1957); R. Perkins, *Criminal Law* 30 (2d ed. 1969).

[31] *State v. Anderson*, 343 A. 2d 505, 508 (1975), *affirmed* 413 A. 2d 611 (1980). The court rejected the claim it was not murder because "the infants were never capable of maintaining a separate and independent existence." *Id.* at 615.

For almost four centuries governments came and went in America, but this law of murder endured as the law of the land - showing that some things are far deeper than mere governments and go to the very heart of how humans define themselves and what they reach to be. And this law is binding on the U.S. Supreme Court.[32]

In *Roe v. Wade* the Court ruled that States could not protect unborn life until the third trimester which the Court set at viability, "about 7 months."[33] But due to the Court's revolutionary definition of the mother's "health," the Court effectively allowed abortions even as the child was being born. Thus the Court decreed second and third trimester abortions to be "liberty" which the framers and adopters of the Fourteenth Amendment had defined to be "murder."

3. The U.S. Supreme Court And The U.S. Government Claim Power To Decree The Extermination Or Mass Murder Of Jews, Or Anyone Else, To Be Liberty.

Of course, if the U.S. Supreme Court can decree the mass murder of some persons to be liberty, it can decree the mass murder of anybody to be liberty.

Indeed, the U.S. Supreme Court was accused in U.S. District Courts of mass murder on the grounds that Justices cannot lawfully decree mass murder to be liberty. The U.S. Government defended its Supreme Court by expressly claiming the Court must be obeyed even if it decrees the mass murder of Jews, or anyone else, to be liberty. An incredulous U.S. District Judge asked the U.S. Government:

> **[U.S. District Judge]: Let me ask you to respond to this question. The plaintiff argues in his brief that the Supreme Court in *Roe v. Wade* took a discrete group of entities and said that these entities have no right to live, and thus may be killed.... And he said if you take *Roe v. Wade* and remove the word "fetus" and just substitute most any other word you want of another discrete group, that we wouldn't be here discussing this at all. Let's say that instead of "fetus," they said "Jews." That is the one he used in his brief.**
>
> **Would you argue stare decisis to me if, under *Roe v. Wade*, at the whim of neighbors Jews could be put to death?**
>
> **[U.S. Govt. Lawyer]: (I) would have to agree with the doctrine of stare decisis and advance it to the court.[34]**

As children were being killed in defiance of murder statutes, the U.S. District Judge adopted the U.S. Government's claim that he must obey the U.S. Supreme Court even if it decreed mass of murder Jews, or anyone else, to be liberty. And on review, not one single Justice had any objection.[35]

Moreover the Justices were individually accused in a U.S. District Court of mass murder on the grounds that they cannot lawfully decree mass murder to be liberty. Each Justice defended himself or herself by claiming that all lower courts must obey the U.S. Supreme Court "no matter how misguided" its decrees may appear to be.[36]

And in this case the State of Nebraska defined partial-birth

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[32] The Court must accept the construction given by a State to its own statute. *Pollard v. Dwight*, 4 Cranch 421, 429 (1808).

[33] *Roe v. Wade*, 410 U.S. at 160, 163.

[34] *Ernest v. U.S. Attorney for the Eastern District of Virginia and U.S. Attorney General*, U.S. District Court in Richmond, Civ. No. 84-0858, transcript 21-22. The complaint attacked the validity of *Roe v. Wade* on the grounds that Justices cannot lawfully decree mass murder to be liberty, and demanded that the District Judge refuse to obey *Roe v. Wade*.

[35] *Ernest v. U.S. Attorney for the Eastern District of Virginia, and U.S. Attorney General*, cert. denied 475 U.S. 1084 (1986).

[36] *Ernest v. Rehnquist, Stevens, Breyer, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, etc., U.S. Attorney, etc., U.S. Attorney General*, U.S. District Court in Alexandria, Civil No. 89-732A, Defendants' Motion to Dismiss 3. The District Court adopted this argument as law by summary decree - refusing to even allow a hearing.

abortions, killing a child in the process of being born, to be a felony punishable by up to twenty years in a penitentiary. But the lower federal judges, claiming they must obey the Court's decree in *Roe v. Wade*, permitted the killings to continue.

Thus the U.S. Government and its U.S. Supreme Court officially claim the power to decree the extermination or mass murder of Jews, or anyone else, to be liberty.

4. The U.S. Supreme Court Has Committed Treason To The U.S. Constitution.

Chief Justice John Marshall would have called *Roe v. Wade* "treason to the Constitution." He wrote that the purpose of the Constitution was to control the government, including judges, and the intention of its framers is the law.[37] He later ruled that the Court could not extend the Constitution "to objects not…contemplated by its framers."[38] And the Chief Justice warned that if the Court usurped such power, it would be "treason to the Constitution."[39]

The officials to be controlled are not free to invent a constitution more to their liking. Lawless officials can overthrow a constitution as surely as armed rebels. Indeed President George Washington warned that "change by usurpation" might be convenient, but it was "the customary weapon by which free governments are destroyed."[40]

By defining killings to be "liberty" which the framers had defined to be "murder," the Court exactly extended the Constitution to objects not contemplated by its framers. The Court confronts the nation with the boldest and plainest case of officials committing "treason to the Constitution" which it could encounter.

By merely changing the names of the victims being killed, the U.S. Supreme Court has duplicated the decree of "the

[37] *Marbury v. Madison*, 1 *Cranch* at 176-180 (1803)
[38] *Ogden v. Saunders*, 12 Wheat. at 332 (1827).
[39] *Cohens v. Virginia*, 6 Wheat. at 404 (1821).
[40] G. Washington, 35 *The Writings of George Washington* 229 (1940).

supreme judge" of Nazi Germany. At Nuremberg the Nazi judges claimed they could not be prosecuted for complicity in extermination and murder because "the supreme judge" had decreed the killing of Jews and other minorities to be legal, and they were obligated to obey the decrees of their supreme judge.[41] But the United States prosecuted those Nazi judges and other justice officials for obeying their supreme judge.

Now U.S. Officials conspire to impose the same Nazi doctrines on the United States which the United States itself prosecuted as extermination and murder at Nuremberg: (1) supreme judges who claim power to decree the mass murder of Jews, or anyone else, to be legal; and (2) officials who claim they must obey such decrees.

When U.S. Officials conspire to impose Nazi doctrines on the United States, no honest person can doubt that these officials have committed treason to the U.S. Constitution.

America has surrendered the promise that everybody has an unalienable right to life and the purpose of government is to protect the life of everyone. Now the lives of all Americans depend on the whim of officials, as in Stalin's Russia or Hitler's Germany.

The Court claims that it must be obeyed when it imposes Nazi doctrines on America.[42]

5. The United States Being Ruled By A Giant Conspiracy To Mass Murder Is the Most Catastrophic Crime In The History of Civilization.

If U.S. Officials cannot lawfully decree mass murder and

[41] *United States v. Altstoetter* [The Justice Case], 3 Trials of War Criminals before the Nuernberg Military Tribunals 1011-1014 (1951). Hitler claimed the emergency provisions of the Weimar Constitution gave him power to act as the supreme judge. As such he decreed the killing of Jews and other minorities to be legal. The Nazi judges claimed that they could not be held accountable for complicity in extermination and murder, because they had acted "within the authority" of the "decrees" of "the supreme judge." *Id.* at 983-85.
[42] *See* notes 35 and 36, *supra*.

extermination to be liberty, as they officially claim in court, then the United States is now being ruled by a giant conspiracy to mass murder - a conspiracy by the leading U.S. Officials to kill children in defiance of murder statutes.

America introduced civilization to the idea that reverence for life is the future for the world. Yet America is now ruled by the most corrupt decree which the human mind can even imagine - MASS MURDER IS LIBERTY. The government of the United States knows how to build and use atomic bombs, but it does not know the difference between mass murder and liberty. This is the vision which America now holds out to guide the future of the world. Now we all descend into a terrifying darkness.

B.

Roe v. Wade Criminally Defied The Constitution's Guarantee Of Life To "Any Person" Because The Court Defied The Rulings Of Chief Justice John Marshall And Used A "Guilty Until Proven Innocent" Burden Of Proof To Imply That The Words "Any Person" Do Not Include The Unborn.

The Court used the correct burden of proof when it previously construed the words "any person."[43] But in *Roe v. Wade* the Court reversed the burden of proof for the unborn.

1.

Chief Justice John Marshall told the Court what it must prove in order to imply an exception to express and universal terms in the U.S. Constitution.

As already described, the words "any person" are express

[43] The Court ruled the words "any person" included Chinese aliens ("subjects of the emperor of China") and explained that the words are "universal." *Yick Wo v. Hopkins,* 118 U.S. 356, 369 (1886). And the Court was so sure that the words "any person" included "corporations," it refused to allow counsel to argue against it. *Santa Clara v. So. Pac. RR,* 118 U.S. 394, 396 (1886).

and universal, and on their face include the unborn, the same as everybody else. In order to imply an exception to exclude the unborn from the Constitution's guarantee of life, so they can be killed with impunity from criminal laws, the Court must prove that including the unborn within the terms "any person" would be "so monstrous, that all mankind would, without hesitation, unite in rejecting the application."[44]

And the Court must prove that if the right to life of the unborn had "been suggested [to the framers] the language would have been so varied, as to exclude it."[45] The Court must prove that the framers would have changed the Fourteenth Amendment to read: "Nor shall any State deprive any person, **except unborn persons**, of life without due process of law."

These are the burdens which protect the lives of all Americans from government sanctioned extermination, as happened in Hitler's Germany. Obviously, the Court must bear the heaviest burden of proof to imply an exception to the Constitution's guarantee of life to "any person" so millions of victims can be killed with impunity from criminal statutes.

Chief Justice Marshall's rules prove that this guarantee of life to "any person" does include the unborn because "all mankind" would not unite "without hesitation" to exclude the unborn. And the framers of the Fourteenth Amendment

[44] *Sturges v. Crowninshield,* 4 Wheat. 122, 202-203 (1819). When the Constitution uses universal words, and a case is "within the very words of the Constitution," Chief Justice Marshall ruled that the Court may not infer an exception unless the "absurdity and injustice of applying the provision to the case, would be so monstrous, that all mankind would, without hesitation, unite in rejecting the application."

[45] *Dartmouth College v. Woodward,* 4 Wheat. 518, 644-45 (1819). When the Constitution uses universal words, the Chief Justice said, "It is not enough to say that this particular case was not in the mind of the Convention, when the article was framed, nor of the American people, when it was adopted. It is necessary to go farther, and to say that, had this particular case been suggested, the language would have been so varied, as to exclude it, or it would have been made a special exception."

would not have changed its guarantee of life to read "any person, except the unborn." The people had already enacted criminal statutes to protect the lives of the unborn throughout gestation, and some abortions were murder.

Thus the Constitution's universal guarantee of life to "any person" does include the unborn.

2.

But in *Roe v. Wade* the Court exactly reversed the burdens of proof described by Chief Justice John Marshall.

The Court said that the evidence did not prove "with any ***assurance***"[46] that the guarantee of life to "any person" includes the unborn. But "assurance" means "To make certain and put beyond doubt."[47]

Thus in *Roe v. Wade* the Court assumed that the words "any person" did not include the unborn, and then placed the burden on the unborn to prove beyond doubt that the words "any person" did include the unborn.

When courts use this burden of proof to condemn tens of millions of victims to death, Americans cannot pretend they still have a government of Constitution and laws.

The Court claims it can use this burden of proof to decree the extermination of anyone to be liberty.[48]

C.

Roe v. Wade Criminally Defied The Constitution's Guarantee Of Life To "Any Person" Because The Court Used Criminal Procedures To Conclude That The Words "Any Person" Do Not Include The Unborn.

Roe v. Wade was a mock trial designed to exclude truth.[49] And the Court maintains its killings with mock trials. It refuses to allow counsel to represent the unborn and defend the

[46] *Roe v. Wade*, 410 U.S. at 157. (emphasis added)
[47] Black's Law Dictionary (4th ed. 1968).
[48] *See* notes 35 and 36, *supra*.

unborn's right to life. It refuses to allow its false evidence in *Roe v. Wade*, which it used to imply that the words "any person" did not include the unborn, to be confronted and cross-examined. It refuses to allow evidence to be presented to show that the Constitution's guarantee of life to "any person" does include the unborn.

The Nuremberg Tribunal cited such procedures as evidence to convict the Nazi judges of complicity in extermination and murder. It said, "Such a mock trial is not a judicial proceeding but a murder."

D.

Roe v. Wade Criminally Defied The Constitution's Guarantee Of Life To "Any Person" Because The Court Fabricated False Evidence To Conclude That The Words "Any Person" Do Not Include The Unborn.

The history of the criminal abortion statutes proves that the framers of the Fourteenth Amendment did not intend its guarantee of life to "any person" to exclude the unborn.

When the Amendment was adopted in 1868, over three-fourths of the ratifying States had already enacted statutes which made abortion at any stage of gestation a crime.[50] Within a few years, these criminal statutes were universal.

The ancient common law supposed that life commenced at "quickening" - when the mother felt the child stir in her womb. But judicial revision makes it impossible for the Court to assert with assurance that the common law in 1868 was any different than the abortion statutes which were supplanting it. As one 19th century Court observed:

> By the ancient common law...as the life of an infant was

[49] *See* Court's procedures in Motion To Allow Counsel To Represent Children Unborn And Born Alive, filed herein and incorporated by reference. *See also* Ernest, *supra* note 1, at 45-53.
[50] The statutes are set out in Quay, *Justifiable Abortion, Medical and Legal Foundations*, 49 Geo. L. J. 447-520 (1961).

> not supposed to begin until it stirred in the mother's womb, it was not regarded as a criminal offense to commit an abortion in the early stages of pregnancy. A considerable change in the law has taken place in many jurisdictions by the silent and steady progress of judicial opinion; and it has been frequently held by Courts of high character that abortion is a crime at common law without regard to the stage of gestation.[51]

By 1868, medical science had long rejected the ancient notion that life commenced at "quickening." The abortion statutes reflected the views of medical science that there was no time during gestation when the unborn were not alive.

In view of this history, the Court cannot meet its heavy burden to prove that the framers intended to exclude the unborn from the Fourteenth Amendment's guarantee of life to "any person," so they could be killed for convenience. This legislative history is fatal to *Roe v. Wade*.

Thus the Court needed to rewrite 19th century medicine and law. The Court fabricated the hypothesis that the 19th century abortion statutes were intended to protect only the mothers, not the unborn. This suggested that the American people never intended the lives of the unborn to be protected by law. This hypothesis was fabricated as follows.

1.

The Court first asserted as fact, "When most criminal abortion laws were first enacted, the procedure was a hazardous one for the woman." *Roe v. Wade*, 410 U.S. at 148. The Court claimed that abortions in the 19th century, even by

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[51] *Lamb v State*, 67 Md. 524 (1887). Some state supreme courts ruled that the common law made abortion at any stage of gestation a crime. *Mills v Comm.*, 13 Pa. 631 (1850); *State v Slagle*, 83 N.C. 544 (1880); *State v Reed*, 45 Ark. 333 (1885).

And those State supreme courts which ruled that abortion prior to quickening was not a common law crime were immediately overruled by their legislatures which made abortion at any stage of pregnancy a crime.

physicians, were hazardous to the woman.

The only authority the Court cited to prove its assertion of fact was a 20th century medical history book.[52] But this book only described the hazards of major surgery in general prior to Lister's discovery of antiseptics. The abortion operation was not mentioned anywhere in the entire book.

The 19th century obstetric authorities throughout the Western world prove that abortions by physicians were "perfectly safe" to the woman.[53] The Court did not examine even one of these obstetric textbooks. They prove the Court's assertion of fact, "the procedure was a hazardous one for the woman," to be false.

The Court never revealed the hazardous abortion procedure to which it was referring. Actually, the 19th century physicians generally used the ancient method,[54] which one physician traced back 2000 years,[55] and which they described as "perfectly safe" to the woman.

Comm. v. Parker, 50 Mass. 263 (1845), was immediately overruled by Mass. Acts & Resolves ch. 27 (1845). *State v Cooper*, 22 N.J.L. 52 (1849), was immediately overruled by N.J. Laws at 266 (1849). *Abrahams v Foshee*, 3 Iowa 274 (1856) was overruled by the next legislature, Iowa Rev. Laws, tit. XXIII, ch. 165. art. 2, sec. 4221 (1860).

[52] Haagensen and Lloyd, *A Hundred Years of Medicine* 19 (1943), cited in *Roe v Wade*, 410 U.S. at 148 n.43.

[53] 2 T. Denman, M.D., *An Introduction to the Practice of Midwifery* 96 (1802). Denman was a standard English medical authority. A French physician wrote "experience has proved that the dangers of the operation are reduced to a small matter." A.L.M. Velpeau, M.D., *A Complete Treatise on Midwifery* 530 (4th Am. ed. 1852). The preeminent American physician wrote "to the mother there is very little danger." H.L. Hodge, M.D., *The Principles and Practice of Obstetrics* 293 (1864).

[54] Dr. Denman, a standard medical authority in England, wrote in 1802: 'the membranes of the ovum are punctured," which permitted "the discharge of the waters," which induced the "action of the uterus," which resulted in the expulsion of the fetus from the womb, which was "perfectly safe" to the woman. 2 T. Denman M.D., *An Introduction to the Practice of Midwifery* 96-99 (1802).

[55] F. Ramsbotham, M.D., *The Principles and Practice of Obstetric Medicine* 724 (4th ed. 1856).

Since abortions by physicians were not hazardous to the mother, the only motivating purpose the abortion statutes could have had was to protect the lives of the unborn from destruction by abortions. Had it been the purpose of the legislators to only protect the mother, then they would have simply required abortions to be performed by physicians.

2.

The Court next asserted as fact, "Abortion mortality was high."[56] The Court cited no authority to support it.

The Court intended this assertion of fact to prove that physicians in the 19th century were killing so many women with abortions that women needed legislation to protect them from the medical profession.

The 19th century obstetric authorities prove this assertion to be false. The obstetric texts show that abortions by physicians were "perfectly safe" to women.

3.

The Court next asserted the conclusion it derived from these two false assertions of fact:

> "[A] State's real concern in enacting a criminal abortion law was to protect the pregnant woman, that is, to restrain her from submitting to a procedure that placed her life in serious jeopardy." *Roe v Wade*, supra, at 149.

This is a false inference, drawn from two false assertions of fact.

The evidence shows these abortion statutes were intended to protect the unborn. The 19th century treatises on criminal law stated that the fetus was "a living being immediately after conception" and these abortion statutes were intended to protect the lives of the unborn during all stages of gestation.[57]

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[56] *Roe v. Wade*, 410 U.S. at 149.

[57] 1 F. Wharton, *A Treatise on the Criminal Law of the United States* 656-57 (5th ed. 1861).

And State supreme courts ruled that these abortion statutes protected the lives of the unborn.[58] And authors of these statutes said their purpose was to protect the unborn.[59]

But since abortions by physicians were known all over the western world to be safe for women, the motivating purpose of these 19th century abortion statutes could only have been to protect the lives of unborn children from destruction by abortions. Since legislatures prohibited safe abortions by physicians, despite the great danger to the mother from abortions by criminals,[60] it proves that their motivating concern was to protect unborn life.

4.

The Court then concluded, "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn." *Roe v. Wade*, 410 U.S. at 158. The Court could not find even one 19th century authority to support this result.

In view of these abortion statutes, the Court cannot prove that the people who framed and adopted the Fourteenth Amendment intended its guarantee of life to "any person" to exclude the unborn, so they could be killed for convenience.

5.

The Court resurrected the ancient view that life begins at "quickening" (about four mponths gestation) and arbitrarily expanded that to "viability" (about seven months gestation). Yet, by the time the Fourteenth Amendment was adopted, both science and law had rejected the ancient view.

A physician, who helped draft Virginia's 1848 state abortion statute, explained that science had rejected the ancient view that life began at quickening:

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[58] *Smith v State*, 33 Me 48 (1851).

[59] *See* Joynes, note 61, *infra*.

[60] "In thirty-four cases of criminal abortion...twenty-two were followed ... by death, and only twelve were not. In fifteen cases necessarily induced by physicians, not one was fatal." H.R. Storer, M.D., *On Criminal Abortion in America* 43 (1860).

> (T)hat the embryo is endowed with an inherent vitality from the first moment of conception, and is therefore as much entitled to the protection of the law before the period of "quickening" as after it, every well-informed physician must yield a ready assent. The old doctrine, once held by medical men...that the foetus first becomes animated, or endowed with distinct vitality, at the moment when the sensation of quickening is experienced by the mother, has been long since banished from the domain of science...and now only finds a retreat in the dark and ancient caverns of the common law.
>
> ....
>
> The civil rights of the unborn child are perfect from the very commencement of its being.[61]

In 1860 the President of the American Medical Association condemned that ancient common law view as a "barbarous physiology" and urged the States to enact statutes to protect all stages of unborn life:

> "This relic of a barbarous physiology needs to be exploded, and the truth should be generally promulgated, that, from the moment of conception, a new being is engendered." 13 Transactions of American Medical Association 56-7 (1860)

In 1864 America's most eminent professor of obstetric medicine wrote:

> From the moment of fecundation, the new being becomes independent...its individuality is complete.... (T)here is a progressive...advancing from one degree of perfection to another. Every protection, therefore, which is extended by human legislation to the young infant... should be equally effectual in securing the life of the embryo from the earliest period of its existence.[62]

[61] L.S. Joynes, M.D., *Foetus in Utero*, Virginia Medical Journal 179-180, 187 (1856).

But the Court adopted a view of unborn life which 19th century medical science had rejected as "a barbarous physiology," which courts had ruled "never ought to have been the law anywhere,"[63] and which legislatures had condemned as criminal.

In construing the phrase in its constitution, "Everybody has the right to life," the Federal Constitutional Court of West Germany ruled that the word "everybody" did include the unborn because "No distinction can be made among the several stages of developing life before birth, or between prenatal and postnatal life."[64] Thus that court ruled that the State had a duty to protect unborn life.

The medical and legal history show that the framers and adopters of the Fourteenth Amendment made this same conclusion when they guaranteed life to "any person" without any exceptions for the unborn. They decided that unborn life was a progressive advancing from one degree of perfection to another, and there was no time when the unborn were not alive and the law could withdraw its protection.

Chief Justice Marshall ruled that the intention of the framers is the law. So the Constitution's guarantee of life to "any person" does include the unborn.

The Court claims it can fabricate evidence to exclude anyone from the Constitution's guarantee of life to "any person" so they can be killed with impunity from criminal statutes.[65] The Court effectively asserts Falsehood Is Truth.

[62] H. L. Hodge, M.D., *The Principles and Practice of Obstetrics* 78 (1864). Hodge's "name had become a household word throughout the land" and his book "valued among the very first works on obstetrics ever issued from the American or foreign press." R. Penrose, M.D., *Discourse on Life of H.L. Hodge* 20-21 (1872).

[63] *Mills v. Comm.*, 13 Pa. at 632 (1850).

[64] *See* note 5, *supra*.

[65] *See* notes 35 and 36, *supra*.

E.

Due Process Of Law Has Compelled The U.S. Supreme Court To Confess In Court That It Is Guilty Of Extermination And Murder.

For the **117th time**, the U.S. Supreme Court is accused of defying the Constitution's guarantee of life to "any person" and exterminating millions of victims whom the Constitution endeavors to preserve.

For the **93rd time,** the U.S. Supreme Court is accused of mass murder in violation of State and federal statutes.

For the **97th time**, the U.S. Supreme Court is accused of using criminal procedures to effect and maintain its *Roe v. Wade* killings.

But, for a quarter-century, the Court has never attempted to refute the charges. Failure to deny a charge is admissible as a confession that the charge is true.[66]

As Socrates cross-examined at his trial 2400 years ago:

> "(Y)ou are silent, and have nothing to say. But is not this rather disgraceful, and a very considerable proof of what I was saying?" And "I may assume that your silence gives consent." *Plato*, 41, 45 (Jowett translation, 1942).

And the Court recognizes this ancient rule:

> "(T)he Court has consistently recognized that…silence in the face of accusation is a relevant fact…. Silence is often evidence of the most persuasive character." *Baxter v. Palmigiano*, 425 U.S. at 319 (1976).

Under the Court's own rulings, its silence is an admission that the charges are true:

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[66] 4 Wigmore, *Evidence*, Sec. 1071-1073 (Chadborn rev. 1972). "Underlying the rule is the assumption that human nature prompts an innocent man to deny false accusations and consequently a failure to deny a particular accusation tends to prove belief in the truth of the accusation." *McCormick on Evidence*, Sec. 161 (Cleary ed., 2d ed., 1972). *See also* Ernest, *supra* note 1, at pages 68-72.

> "Failure to contest an assertion, however, is considered evidence of acquiescence only if it would have been natural under the circumstances to object to the assertion in question." *United States v. Hale*, 422 U.S. 171,176 (1975).

The circumstances leave no doubt that the U.S. Supreme Court's silence is a confession that the charges are true.

First, the evidence proves the charges to be true. The Court decreed killings to be "liberty" which States had defined to be "murder." This is mere historical fact. No denial is possible. As Chief Justice John Marshall wrote, "a fact which has existed cannot be made never to have existed."[67]

Second, the charges were made in court, the place designated by law to hear such accusations. The Justices could not lawfully close their eyes on the evidence because they had a legal duty to refute the charges, if they could. Chief Justice John Marshall ruled that judges who "close their eyes on the Constitution" and "condemn to death those victims whom the Constitution endeavors to preserve" commit "crime."[68] The Court had a legal duty to fully hear allegations that *Roe v. Wade* was wrongly decided, and to obey the evidence.

Third, the Court's steadfast silence for a quarter-century in the face of scores of accusations is unparalleled in the legal history of the world. The Court itself cited this circumstance as making confession by silence more trustworthy:

> "Silence gains more probative weight where it persists in the face of accusation, since it is assumed in such circumstances that the accused would be more likely than not to dispute an untrue accusation." *United States v. Hale*, 422 U.S. 171, 176 (1975).

Fourth, the evidence showed the United States was being ruled by a giant conspiracy to exterminate and mass murder.

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[67] *Marbury v. Madison*, 1 Cranch 137, 167 (1802).
[68] *Marbury v. Madison*, 1 Cranch 137, 179-180 (1803).

Never in history had it ever been more imperative to deny charges if they were untrue.

And **fifth**, the Justices met the charges in court by claiming they must be obeyed even if they decreed the mass murder of Jews, or anyone else, to be liberty.[69]

A government of laws can permit only one conclusion to be drawn from these facts: the U.S. Supreme Court has confessed in court that the charges are true.

If *Roe v. Wade* is a mistake of law, then all government officials who helped to support the killings can be prosecuted for complicity in extermination and mass murder.

The general rule is that mistake of law is no excuse for breaking the law.[70] The Constitution's *ex post facto* provisions do not apply to judicial decisions which are a mistake of law.[71] The limited affirmative defense of reasonable reliance on an official judicial opinion, thereafter determined to be a mistake of law, does not apply in homicide cases, much less national extermination.[72] But even if it did, no reliance on *Roe v. Wade* could be reasonable in view of the above facts. So the law applied at Nuremberg applies here: Obedience to decrees of the supreme judge is no defense to complicity in extermination and mass murder.

Even if the U.S. Supreme Court held a gun to a man's head, and threatened death unless he obeyed *Roe v. Wade*, it would not be a defense to complicity in extermination and murder. As Blackstone wrote, "he ought rather to die himself than escape by the murder of an innocent."

In explaining why the Western democracies bowed to violence and the Nazis got away with monstrous crimes, Winston Churchill merely quoted Machiavelli: "Men avenge slight injuries, but not grave ones." Thus America is now ruled by a giant conspiracy to exterminate and murder.

"Political language," wrote George Orwell, "is designed to make lies sound truthful and murder respectable." In his novel *1984*, Orwell described a tyranny which claimed "Whatever the Party holds to be truth is truth," and defrauded its subjects into obedience with its slogans "FREEDOM IS SLAVERY" and "WAR IS PEACE." This science fiction may appear implausible. Yet for a quarter-century the United States has been ruled by a Court which claims, "Whatever the Court holds to be truth is truth," and maintains obedience with its slogans MASS MURDER IS LIBERTY, FALSEHOOD IS TRUTH, and TREASON IS LAW.

But all that will be swept away. The primitive idea, that some can gain by killing others, has no future. The message of our Declaration of Independence becomes more true every day: reverence for life is the only path to the future. Wherever we are, wherever in the universe our kind may go, our essential thought, the thought necessary for us to exist, will always be reverence for life.

CONCLUSION

The Court must uphold the Nebraska abortion statute, overrule *Roe v. Wade*, and proclaim the truth: the U.S. Constitution's universal guarantee of life to "any person," made in its Fifth and Fourteenth Amendments, does include the unborn. State and federal governments have a duty to protect unborn life.

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[69] *See* notes 35 and 36, *supra*.

[70] R. Perkins, *Criminal Law* 920 (2d ed. 1969). Oliver Wendell Holmes, *The Common Law* 41 (1963).

[71] *Ross v. Oregon*, 227 U.S. 150, 161 (1912).

[72] Model Penal Code, Sec. 2.04 Ignorance or Mistake (Proposed Official Draft 1962) and comments in Model Penal Code, Tentative Draft No. 4, Comments on Sec. 2.04, page 138; R. Perkins, *Criminal Law* 928 (2d ed. 1969).